

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

Informational Proceeding and Preparation of the 2005  
Integrated Energy Policy Report.

Docket No. 04-IEP-01

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON THE STAFF'S PROPOSAL  
FOR ELECTRICITY DEMAND AND RETAIL PRICE DATA REQUIREMENTS**

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Date: September 30, 2004

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In accordance with the procedural schedule set forth in the Notice of Committee Workshop on the Electricity Demand and Retail Price Data Requirements dated September 3, 2004, the Alliance for Retail Energy Markets ("AReM") hereby submits these comments on the Commission staff's proposal for electricity demand and retail price data requirements.

**I. INTRODUCTION**

AReM is a regulatory alliance of energy service providers ("ESPs") that serve most of the direct access load in California. Representatives of AReM's member companies attended the two-day workshop on the staff's proposal and provided the staff with technical comments on the proposal at that time. AReM is confident that the staff understood and will take due consideration of those comments and thus they will not be repeated here. Instead, AReM would like to use this opportunity to discuss the need for the Commission to designate as confidential the data submitted by ESPs pursuant to the

reporting requirements that are ultimately adopted in this proceeding, and to aggregate any ESP-related data that is released to the public.

## **II. THE NEED FOR CONFIDENTIALITY**

Under the staff's proposal, ESPs would be required to submit proprietary, detailed, and, in some cases, customer-specific data relating to their sources of power, procurement costs, sales volumes and revenues. ESPs and their customers could be harmed by public disclosure of ESP-specific data in at least two ways. First, wholesale suppliers could use the data to form a detailed picture of an ESP's requirements and the price the ESP is able and willing to pay for power, knowledge that could be used to the ESP's disadvantage in negotiations with the suppliers. Second, an ESP's competitors (i.e., other ESPs, the electric utilities, distributed generation developers, etc.) could use data relating to the ESP's customer base and sales revenues to develop predatory pricing strategies.

In contrast to the utilities, ESPs have no cost recovery guarantees and operate in a highly competitive market. The loss of competitive advantage suffered by an ESP due to the public release of proprietary data could not only impact the ESP's "bottom line," it could lead to the ESP being pushed out of the market, thereby putting peoples' livelihoods at risk and reducing the competitive options available to California consumers. Indeed, similar data submitted by the utilities to the California Public Utilities Commission is kept strictly confidential, with only a small group of non-market participants with a recognized interest in monitoring the utilities' procurement activities being allowed access to the data. Thus, it is imperative that the Commission designate all ESP-submitted data as confidential.

### **III. THE NEED FOR AGGREGATION**

AReM recognizes that the disclosure of demand and price information submitted by ESPs may be appropriate in limited circumstances, i.e., to explain or justify a policy or recommendation set forth in the Commission's annual *Integrated Energy Policy Report* or for other regulatory purposes. (Those purposes would *not* include monitoring of ESP procurement activities by ratepayer advocacy groups, as ESP procurement is not subject to regulatory oversight.) When ESP-submitted data is disclosed to the public, the data should be aggregated and/or masked to the extent necessary to preclude use of the data for commercial purposes. Specifically, data relating to ESP supply portfolios and retail sales should be aggregated on a statewide basis, and data relating to ESP costs and sales revenues should be aggregated and stated in terms of averages and ranges. In no event should information be disclosed that would allow a party to associate data with a particular ESP or group of ESPs.

### **IV. LEGAL AUTHORITY**

Section 25320 of the Public Resources Code authorizes the Commission to require ESPs and other LSEs to submit electricity demand and retail price data as provided in the staff's proposal to develop various policy reports and analysis, e.g., the Commission's annual *Integrated Energy Policy Report*. Pursuant to Section 25322, any party that is required to submit information to the Commission pursuant to Section 25320 "may request that specific information be held in confidence" and the Commission is directed to grant the request if: (a) the information is exempt from disclosure under the California Public Records Act; (b) the information satisfies the requirements set forth in the Commission's general regulations governing the confidentiality of information

submitted by third parties; or (c) on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.<sup>1</sup>

The Commission's confidentiality regulations provide for information submitted by a third party to be designated as confidential where "the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage..."<sup>2</sup> In addition, the Commission's regulations provide for confidential information to be aggregated or masked if disclosed to the public.<sup>3</sup> Similarly, Section 25322 provides that "[i]nformation presented to or developed by the [C]ommission and deemed confidential ... shall be ... aggregated or masked to the extent necessary to assure confidentiality if public disclosure of the specific information would result in an unfair competitive disadvantage to the person supplying the information."<sup>4</sup>

As discussed above, ESPs would suffer loss of competitive advantage, both with respect to potential suppliers and competitors, by public disclosure of the data that ESPs are required to submit under the staff's proposal. As the Commission and other state regulators have repeatedly affirmed, consumers benefit from competition in the retail electricity market, and competition would be harmed to the extent ESP-specific data is disclosed. And AReM is not aware of any regulatory policy or public purpose that would be furthered by public disclosure of ESP-specific data. Thus, the data to be submitted by ESPs under the staff's proposal for implementing Section 25320 satisfies both the

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<sup>1</sup> Pub. Res. Code § 25322(a)(1).

<sup>2</sup> CEC Rules of Practice and Procedure, § 2505(a)(4).

<sup>3</sup> *Id.*, § 2505(a)(5).

<sup>4</sup> Pub. Res. Code § 25322(a)(4).

requirements of the Commission’s confidentiality regulations and the “harm versus benefits” tests set forth in Section 25322. Accordingly, the Commission has clear authority to maintain the confidentiality of ESP-submitted data. Moreover, the Commission has a clear directive to limit the disclosure of ESP-submitted data to data that has been aggregated as AReM proposes.

## **V. RECOMMENDATION**

In addition to providing for LSEs to request confidentiality protections for data submitted to the Commission pursuant to Section 25320, Section 25322 provides that the Commission “may, by regulation, designate certain categories of information as confidential, which removes the obligation to request confidentiality for that information.”<sup>5</sup> Given that the data to be submitted by ESPs pursuant to the staff’s proposal for implementing Section 25320 clearly satisfies the confidentiality requirements set forth in Section 25322, there is no need to require individual ESPs to submit written requests for confidentiality, nor does it make sense to revisit the aggregation issue for each ESP request, and doing so would waste both ESP and Commission resources. Accordingly, AReM recommends that the Commission use its authority under Section 25322 to adopt the following regulation:

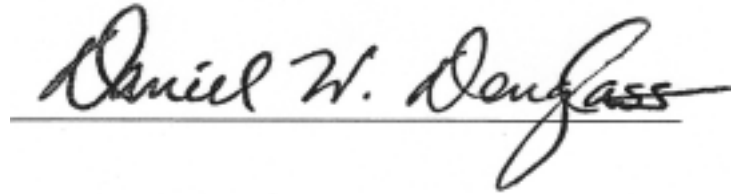
Confidentiality of ESP Data. Information submitted by an energy service provider pursuant to Section 25320 shall be held in confidence by the Commission and shall be aggregated or masked to the extent necessary to assure confidentiality. Information relating to demand and sources of supply shall be aggregated on a statewide basis, and information relating to costs and revenues shall be aggregated on a statewide basis and stated in terms of averages and ranges only.

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<sup>5</sup> *Id.*, § 25322(a)(2).

At a minimum, the Commission should establish the presumption that ESP-submitted data, if not all LSE submitted data, should be held in confidence and that any data released to the public must be at an aggregated level. Clearly stating this presumption as Commission policy would at least mitigate the angst ESPs, as well as other LSEs, are experiencing at the thought of proprietary and customer-specific information getting into the hands of their suppliers and competitors.

Respectfully submitted,

A handwritten signature in dark ink, reading "Daniel W. Douglass", is written over a horizontal line.

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